

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF MIAMI-DADE COUNTY, FLORIDA

These Comments are filed by Miami-Dade County (the “County”) in opposition to the suggestion that additional federal regulations are needed to ensure competitive cable entry and rapid broadband deployment. As an experienced local franchising authority (“LFA”), the County has found that the franchise¹ approval process has been a great asset in furthering legitimate policy objectives and has not, in any way, hindered the entrants of new competitors into the marketplace.

The imposition of additional federal restraints on the authority of LFAs to review applications from new cable operators will have the deleterious effect of curtailing many of the needed protections afforded to cable subscribers by their elected officials and will improperly trample on state’s rights. Based on over 25 years of experience as a franchisor, the County has found that competitive cable franchises are routinely awarded on a timely basis although the promise of competition in the marketplace and the resulting lower prices to consumers is not always apparent. Accordingly, these comments are filed to supplement the record and demonstrate that no additional regulations on LFAs are required because local franchisers do not represent unreasonable barriers to the entry of competitive cable operators into the local video and broadband markets.

I. The Current State of Cable Franchising in Miami-Dade County

As a political subdivision of the State of Florida with a population of 2,379,000, the County has significant experience in local franchising issues. The first non-exclusive cable franchise issued by the County was in 1978. Since that time, the County has expeditiously granted every cable television applicant a franchise. Currently, Miami-Dade County has eleven (11) franchises issued to the following five (5) cable providers:

¹ In the County, a cable “franchise” is termed a license. Since the Federal Cable Act refers to this as a “franchise,” that term will be used in these comments.

CABLE PROVIDER	FRANCHISE EXPIRES	SUBSCRIBER COUNT	HOMES PASSED BY ACTIVE CABLE
Adelphia	10/17/07	72,046	180,005
Atlantic Broadband (2)	10/17/07	86,570	144,113
BellSouth Entertainment	03/18/07	5,736	49,929
Comcast (6)	08/01/13	310,705	650,780
Strategic Technologies	10/17/07	1,629	7,929
Totals		476,686	1,032,756

Five of these franchises are currently within the renewal period as set by federal guidelines. The County is also currently considering the application of another potential entrant, KG Communications Inc., which has expressed an interest in providing cable services to a small area within the County and is currently preparing a cable franchise application.

II. Miami-Dade County's Cable Ordinance

The County's cable franchising ordinance, codified in Chapter 8AA of the Code of Miami-Dade County (the "Ordinance"), was enacted in 1990. The purpose of the Ordinance is to promote the public health, safety and general welfare of the citizens of the County by providing for the control of cable systems throughout the County. The Ordinance provides for the payment of fees and other valuable consideration by a franchisee to the County for using the public rights-of-way for constructing and operating a cable system; promotes widespread availability of cable service to County residents; encourages the provision of diverse information to the community over cable; and establishes minimum standards for the regulation and performance of cable systems in the County for all cable television franchises.

The Ordinance is uniformly applied to ensure that a level playing field exists for all current and future cable providers. The Ordinance therefore encompasses many of the items that have traditionally been the subject of individual franchisee negotiations to further the goal of uniformity. For example, the Ordinance specifies the factors that the Board of County Commissioners can, and must, consider when determining whether to approve or deny a cable franchise application. These include, all requirements of state and federal law; the economic impact on private property within the proposed franchise area; the capability of the public rights-of-way to accommodate the proposed system; the present and future use of the rights-of-way to be used; the potential disruption to existing users of the public rights-of-way and whether the proposal will meet reasonably anticipated community needs and serve the public interest.

The Ordinance also provides for regulation of items of local interest such as specific information on the funding and number of channels reserved for Public, Educational, and Governmental programming, liability, indemnification, construction, public rights-of-way management, consumer protection procedures and enforcement policies.

When a new entrant applies for a franchise, the Ordinance requires the County to publish notices requesting comments from the public or any interested person regarding an initial cable franchise application within ninety (90) days of receiving a complete application.

The County has also traditionally conducted one or more meetings in the area of the County where the proposed franchisee plans to provide service to give the public an opportunity to comment on the application. Comments received from the public are one of the factors considered when the County makes a final determination on the application. Miami-Dade County is required to make a final determination on all initial franchise applications within eight (8) months of the date a completed application is received unless the applicant causes a delay.

The County further requires each franchisee to contribute funds to the capital costs for community and government access channels. Contributions do not exceed one dollar (\$1.00) per subscriber per year. The contribution for each franchisee is a percentage of capital costs equal to that franchisee's weighted pro rata share of all Miami-Dade County cable subscribers.

The Ordinance is consistent with the Cable Act, 47 U.S.C. 531 which authorizes local governments to establish requirements in franchises concerning channel capacity for government and community access programming, and 47 U.S.C. 541(a)(4)(B), allows a local government to require assurances that the cable provider will provide adequate community and government access channel capacity, facilities, and financial support. Although the Florida Legislature removed the authority of local governments to directly collect franchise fees as payment for use and burden on the rights-of-way, it specifically left these other items in local hands. Specifically, pursuant to Florida Statute 202.24(2)(a)(3) and (2)(c)(8), and 337.401(3)(a)(2), each Florida municipality and county retains the right and authority to negotiate all other terms and conditions of a cable television franchise, including the provision of in-kind requirements, and contributions for or in support of community or governmental access channels.

III. Even Without a Full Build-out Requirement on Competing Providers, Miami-Dade County Has Found Little Impact on Competition in the Market

The County's experience in granting competing cable franchises without a build-out requirement contradicts those parties that claim that so called "level-playing field" statutes "create unreasonable barriers to entry." See *Notice of Proposed Rulemaking* at ¶ 14. As previously stated, the County has been issuing non-exclusive cable television franchises since 1978. Initially, the County required cable operators to build out certain areas of the County to ensure that everyone in the County was able to receive cable television services. That requirement worked well until virtually everyone in the County had access to cable television services.

In an effort to promote competition, the County removed build out requirements from the Ordinance in 1997 and issued a competitive franchise to BellSouth Entertainment, Inc. (BellSouth) to overbuild the existing cable franchisees. Seven of the largest franchisees sued the County in both state and federal court. These franchisees argued that the County had failed to follow its own application process; that their constitutional rights were violated; and that the County had violated the state level playing field law.²

² See *ACP Holding Corp., et al. v. Dade County*, Case No. 97-10915 CA 15 (Fla. 11th Cir. 1997); *Rifkin/Miami Management Corp., et al. v. Metropolitan Dade County, et al.*, Case No. 97-1567-Civ-Graham (S.D. Fla. 1997).

In state court, the trial judge rejected these arguments and summary judgment was entered for the County and which was upheld on appeal. The trial court's order was a one-sentence order entering judgment without opinion and the appellate court's decision was per curiam, also without opinion. Subsequent to the ruling by the State Court, the Federal Court granted summary judgment on res judicata grounds. As a result, this litigation did not produce any meaningful opinions on such issues as overbuilding and level playing field statutes.

Critical to the questions asked in the NPRM, however, is that even after nine years of operating without a full build-out requirement, BellSouth currently provides cable television service to less than 6,000 subscribers. This is true even though BellSouth's franchise permits them to construct and provide cable services throughout the County's franchise areas. It is therefore apparent from the County's experience that elimination of build-out requirements in an effort to stimulate competition amongst cable providers, even when the new entrant has virtually unlimited resources, does not, in fact, lead to wide-spread facility based competition and lower prices for consumers. Rather, many of the entrants who apply for new franchises seek to serve only those areas of the County that are under development and not yet served by other operators.

IV. Miami-Dade County Provides Needed Services to its Constituents as a LFA

Local regulations provide critical protections to subscribers of cable television. Since the enactment of the Telecommunications Act of 1996, the County has received over 230,000 local cable related calls, documented and handled over 10,000 cable television complaints and assisted consumers in getting approximately \$250,000 in credits.

The County employs a Licensing Administrator and a Field Enforcement Officer who follow up on the above mentioned complaints. The County has worked with local franchisees to resolve most complaints within seven days of receipt and provide customers with a 20% credit on their monthly bill for each day the customer is without service on any one channel.

The County's cable staff ensures that cable franchisees meet the minimum signal levels required by the Federal Communications Commission (FCC) and comply with local rights-of-way requirements. Cable staff also ensures that franchisees provides free cable television services to public schools and that property owners are notified of construction activities in their neighborhoods prior to excavations and construction activities.

The County has also worked with franchisees to ensure that consistent and comparable levels of service are provided throughout the County. Working with local franchisees has also enabled Miami-Dade County to get local cable television systems upgraded to State-of-the-Art technologies to address local needs for services like High Definition, Video-on-Demand, and High Speed Internet.

County oversight of cable operators is particularly important in South Florida as the area has a potential to get hit by numerous hurricanes each year, affecting both lives and property of its residents and businesses. The County works with local franchisees to ensure that vital news and information can be transmitted over cable systems by ensuring that local franchisees have resources in place prior to each hurricane season to restore services as soon as possible. For example, the County has provided authorization for Comcast, the County's

largest cable franchisee, to have access to the Emergency Operations Center during and after hurricanes to address local critical needs and have direct access to other local utilities. Franchisees are required to provide the County Manager with the capability to remotely override the audio or insert video messages over all channels on their cable systems during emergency periods. To assist local operators with post-disaster repairs, the County has “force majeure” language in the Ordinance to address issues regarding credit to local consumers for outages and franchisees concerns relating to the loss of their customer bases due to hurricanes.

The County’s Public, Educational, and Government (PEG) channels provide an avenue for local officials and non-profit organizations to keep local residents informed about local policy decisions and events. These channels also provide an opportunity for democracy by giving citizens a local voice. This quality programming is currently provided not only via airwaves and from cable franchisees, but also through web casting and video streaming.

Franchisees are also required to provide broad categories of programming addressing the unique needs of the diverse communities of the County. These categories include programming representative of the numerous languages and cultures that exist throughout the County. According to the results of a telephone survey conducted in 2003 by Miami-Dade County, cable operators in Miami-Dade County offer more Spanish language channels targeted to the Hispanic community than any other major metropolitan area in the country.

V. The Commission Should Avoid Enacting Unnecessary Regulations that Will Decrease the Valuable Protections and Services that LFA’s offer their Constituents

The Commission’s Notice of Proposed Rule Making (NPRM) states that it seeks “to determine whether, in awarding franchises, local authorities are carrying out legitimate policy objectives allowed by the Cable Act or are hindering the federal communications policy objectives of increased competition in the delivery of video programming and accelerated broadband deployment...” The County respectfully submits that at least in its own experience the authority of LFA’s to grant franchises does not, in any way, hinder competition in the marketplace, and that any additional regulations limiting the authority of the LFA will trample on localism and prevent local authorities from ensuring the protections and benefits that cable subscribers have long enjoyed.

The County believes that cable franchising is inherently a local issue. Local jurisdictions are best equipped to deal with issues as they arise in providing cable services. For example, the County has acted as a mediator for more than 10,000 complaints between consumers and cable providers. As an impartial mediator, the County ensures that consumers receive the services they are paying for and assists cable providers in dealing with frivolous complaints. The County also ensures that the cable providers are protected from cable theft by enforcing federal law and assists cable operators in gaining access to private easements for cable related activities.

Existing laws provide cable operators with the ability to take disputes with local franchising authorities, should there be any, to a local state or federal court to get resolution. Local courts have an understanding of local issues and conditions when resolving disputes brought before them.

The suggestion in the NPRM that level-playing-field statutes create unreasonable regulatory barriers or comparability among providers is belied by the real life experiences in the County. Even when courts have found that Florida's level playing field statute is flexible enough to permit local authorities to allow more limited entrants by new providers, the promise of facilities based competition in geographic areas has not been fulfilled. Where level playing field statute do require universal build out from new entrants, Miami-Dade County believes that local authorities should be the ones to consider whether such a requirement would really best serve that market's competition needs rather than a one-size-fits-all solution necessitated by federal regulations. In either case, the County strongly believes that each local authority must retain the authority to require at least some build out where the community is not otherwise served.

Concerning the Commission's question of the NPRM, whether it may be appropriate for the Commission to preempt state-level legislation to the extent that it serves as an unreasonable barrier to the grant of franchises, the County's position is that it opposes any state legislation which would create a Texas-style statewide franchise unless such legislation fully protected the ability of local government authorities to ensure future local cable related community needs were satisfied.

Rather than looking at ways to decrease the authority of LFA's the Commission should be looking at ways to empower localities to further the Commission's stated goals. Since the passage of the 1992 Act upon which the current regulatory regime is based, the most significant change in the local cable marketplace has been that most new residential development is occurring within planned communities where developers or association boards often enter into exclusive long term bulk agreements with start-up cable operators that are not necessarily driven by competitive forces in the marketplace. Rather than reducing the authority of LFAs to regulate these new entrants, the Commission and Congress should empower LFAs with the authority to ensure that these new entrants are negotiating at arms length with developers and reaching agreements that do not unnecessarily bind future residents to unfavorable contracts for years to come.

Finally, Miami-Dade County strongly agrees with the Commission's tentative conclusion, in its NPRM, that it is not unreasonable for a local authority, in awarding a franchise to: (1) assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides; (2) allow a cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area; and (3) require adequate assurance that the cable operator will provide adequate access channel capacity, facilities, or financial support. Miami-Dade County is concerned that its authority as a local regulator not be decreased, either by FCC rule or by the Florida Legislature, as happened in Texas (as of the date of the filing of these Comments, a "Shell Bill" has been filed for the current session of the Florida Legislature which is understood to be a Verizon-sponsored Bill which will aim to reduce or eliminate local franchising). Local cable franchising ensures that local cable operators are allowed access to the rights-of-way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local

community's specific needs are met and that local customers are protected. In light of the foregoing, Miami-Dade County respectfully requests that the Commission not take any action that would interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted this 13th day of January, 2006,

Miami-Dade County Florida

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